IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 436 of 2005

Om Prakash & others

Versus

State & another

Date of decision :- 02-08-05

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date :- August 2, 2005 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the Judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL MISC. APPLICATION NO. 436 of 2005

Om Prakash and others .....Applicants

VERSUS

1. State of Uttaranchal
2. Samarpal Singh S/o Sri Gokul Singh, resident of village Shivlapur Amanjhanda P.S.Kashipur, district Udham Singh Nagar .....Respondents

Dated:- 2.8.-2005

Hon'ble J.C.S. Rawat, J.

1. Heard Smt. Puspa Joshi learned counsel for the applicants and learned AGA and perused the record.

2. This is an application under section 482 Cr.P.C. for quashing the proceedings of Criminal (complaint) Case No. 222 of 2005 under sections 147, 148,149, 323, 324, 325, 307, 392, 394, 504, 506 IPC pending in the court of Judicial Magistrate, Kashipur.

3. An application u/s 156(3) Cr.P.C. was moved by the respondent no.2 against the applicants on 25./8.2004. Thereafter the learned Magistrate directed the police to register a case and to enquire the matter. Pursuant to the said order a case was registered against the applicants under sections 147, 148,149, 323, 324, 325, 307, 392, 394, 504, 506 IPC. The police enquired into the matter and after investigation, the Investigating Officer came to the conclusion that a false complaint was filed against the applicants and he also recommended that a complaint u/s 182 Cr.P.C. be also filed against respondent no.2. Thereafter the respondent no.2 was informed about the final report.

He filed protest application and the learned Magistrate after hearing respondent no.2 came to the conclusion that the final report submitted by the police was liable to be set aside and he further directed that the protest application be treated as a complaint and the statements u/s 200 and 202 Cr.P.C. be recorded in accordance with law. Thereafter the statements u/s 200 and 202 Cr.P.C. were recorded and the learned Magistrate took the cognizance against the applicants under the above sections.

4. The learned counsel for the applicants contended that the learned Magistrate while taking the cognizance overlooked the final report submitted by the police and also ignored that the complainant was arrested and the complainant was in Jail on 25.8.2004. It was further contended that the order of summoning of the applicants is only a harassment of the applicants and the complaint was filed by the respondent no.2 just to pressurize the applicants. It was pointed out that the respondent no.2 and others were arrested in case no.828/2004 and they were sent to Jail but as a counter blast the instant prosecution was launched. It was further contended that he was medically examined on the date when the incident took place but no report or complaint was filed. It was further contended that the story as narrated by the complainant is concocted and totally false and cannot be believed. Learned AGA refuted the contentions and contended that there was sufficient evidence to corroborate the statement of the complainant and the conclusion arrived by the Investigating Officer was not correct. The learned Magistrate has rightly taken the cognizance on the

same material. It was further contended that the learned magistrate has unfettered power in this regard.

5. It is well settled position of law that if the evidence is to be scrutinized as to whether it is reliable or not, it cannot be scrutinized by this court and only the trial court can evaluate the evidence during the trial. This court cannot embark upon the evidence, probabilities or as to whether the evidence adduced in respect of the contentions is reliable or not. The complainant respondent no.2 adduced the evidence u/s 200 and 202 Cr.P.C., which clearly discloses that there were sufficient grounds to proceed against the applicants and the learned Magistrate, has rightly proceeded against the applicant. It is also pertinent to mention here that the applicants have also lodged a report against the complainant party u/s 307IPC on the date and time of the incident as admitted by the learned counsel for the applicants.

6. In view of the above discussion the application u/s 482 Cr.P.C. devoids of merit and is dismissed. However, if the applicants appear before the trial court, their bail application shall be disposed of expeditiously.

(J.C.S.RAWAT J)

Dated: August 2, 2005